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IN-SHELL PISTACHIO NUTS FROM IRAN

Determination of the Commission in Investigation No. 731-TA-287 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation

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UNITED STATES INTERNATIONAL TRADE COMMISSION

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Note.--Information that would reveal the confidential operations of individual concerns may not be published and, therefore, has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

Investigation No. 731-TA-287 (Preliminary)

IN-SHELL PISTACHIO NUTS FROM IRAN

Determination

On the basis of the record 1/ developed in investigation No. 731-TA 287 (Preliminary), the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Iran of pistachio nuts, not shelled, provided for in item 145.26 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 26, 1985, petitions were filed with the United States International Trade Commission and the U.S. Department of Commerce by counsel for the California Pistachio Commission, Blackwell Land Co., California Pistachio Orchards, Keenan Farms, Inc., Kern Pistachio Hulling & Drying Co-Op, Los Ranchos de Poco Pedro, Pistachio Producers of California, and T.M. Duche Nut Co., Inc., alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports from Iran of in-shell pistachio nuts which are alleged to be sold in the United States at LTFV. Accordingly, effective September 26, 1985, the Commission instituted preliminary antidumping investigation No. 731-TA-287 (Preliminary).

1/ The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).

Notice of the institution of the Commission's investigation was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of October 3, 1985 (50 FR 40460). The Commission held a public conference in Washington, DC, on October 18, 1985. All persons who requested the opportunity were permitted to appear in person or by counsel.

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VIEWS OF THE COMMISSION

We determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of raw, in-shell pistachio nuts from Iran which are allegedly sold in the United States at less than fair value (LTFV). 1/

The Commission's affirmative decision in this investigation is based primarily on the rapid increase in imports of pistachio nuts from Iran, the substantial increase in inventories of imported raw, in-shell pistachio nuts in the United States, and consistent underselling by the imported products. 2/

Like product and domestic industry

Like product--The imported articles subject to this investigation are raw, in-shell pistachio nuts. 3/ 4/ The imported nuts have been semi-processed; that is, the imported nuts have been hulled, washed, dried, and graded, but not salted and/or dyed or roasted. The nuts must be further processed by salting and/or dyeing and roasting before being sold to the ultimate consumer.

The imported and domestic raw, in-shell pistachios are equivalent and are sold in the marketplace to the processors for salting and/or dyeing, roasting,

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1/ Material retardation is not an issue in this investigation and will not be discussed further.

2/ See note 29 at 10, infra.

3/ Section 771(10) of the Tariff Act of 1930 defines "like product" as: "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." 19 U.S.C. § 1677(10).

4/ See Report of the Commission (Report) at A-6. The nuts must be hulled and dried to a 4-6 percent moisture content in order to prevent spoilage during storage and shipping. Nuts which have been hulled are referred to as "in-shell" pistachios. In-shell nuts which have been dried to a 4-6 percent moisture content are termed "raw" by the industry.

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and ultimately to the consumer as snack food. 5/ For purposes of this preliminary investigation, the Commission has determined that domestic raw, in-shell pistachio nuts that have been harvested, hulled, dried to a moisture content of 4-6 percent, and graded are like the imported raw, in-shell pistachio nuts.

The domestic industry 6/--Pistachio nuts go through several separate steps before they are sold to the ultimate consumer, including growing, harvesting, hulling, washing, drying, grading, salting and/or dyeing, roasting, and bagging. In the domestic industry, different producers perform these separate steps. As noted above, we have determined that the like product is pistachio nuts that have been processed through grading. For purposes of this preliminary investigation, we determine that the domestic industry includes those producers who process the nuts from hulling through grading. However, two additional questions are presented: (1) whether the growers of the pistachio nuts should be included in the domestic industry, and (2) whether roasters that process the nuts after grading should be included in the domestic industry.

Under certain circumstances, the Commission has defined a domestic industry producing a processed agricultural product to include not only the processors, but also the growers of the unprocessed agricultural raw material. The Commission makes that determination on a case-by-case basis by

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5/ The data also show that a small amount of pistachio nut meats are sold as an ingredient for other foods. In the case of pistachio nuts, about 75 percent of the U.S. crop is sold as in-shell snack food. The remaining 25 percent is sold as nutmeats for use as snack food or as an ingredient for other foods. Id. at A-10.

6/ Section 771(4)(A) of the Tariff Act of 1930 states: "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." 19 U.S.C. § 1677(4)(A).

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analyzing the nature of the particular industry under investigation. Some of the criteria which the Commission have examined are whether there is a continuous line of production of the like product and whether there is a common economic interest between the growers and the processors. This second criterion has been analyzed by examining such factors as interlocking ownership and economic integration. 7/

The structure of this production process is accurately characterized as a single, continuous line of production of the like product, starting with one raw material that yields only one product--raw, in-shell pistachio nuts. The pistachio nuts are not transformed into a different article throughout the process. The product remains substantially unchanged. 8/ The record in this preliminary investigation indicates that there is one continuous line of production from growing and harvesting through the grading process.

The information available in this preliminary investigation indicates that there is a common economic interest between the growers and the initial processors. 9/ The record contains evidence of interlocking ownership. Pistachio growers own processing companies that account for approximately 40 percent of the capacity to process pistachio nuts. 10/ The record also contains evidence of economic integration; domestic producers testified at the hearing that a contractual relationship exists between the initial processors

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7/ See Additional Views of Vice Chairman Liebeler, infra.

8/ Lamb Meat from New Zealand, Inv. No. 701-TA-80 (Preliminary), USITC Pub. 1191 (1981); see also Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final), USITC Pub. 1733 at 6 (1985).

9/ The Commission, however, will examine this issue more thoroughly in the event of a final investigation.

10/ Transcript of the conference (Tr.) at 109; Report at A-5.

and growers that covers this structure in terms of payment. 11/ We, therefore, determine that the growers should be included in the domestic industry.

After grading, both the domestic and imported nuts are further processed in the United States by roasting, salting, dyeing, and bagging. Roasting changes pistachio nuts into a form that is different from the imported product. 12/ Therefore, we determine that all roasting operations are not part of the domestic industry because they do not produce the like product--raw, in-shell pistachio nuts. 13/

Condition of the domestic industry

Once the domestic industry is defined, the Commission then determines whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury. 14/ In examining the condition of this industry, the Commission considered the special nature of the agricultural product involved in this investigation. 15/ The

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11/ Petition at 26; Tr. at 72.

12/ Report at A-5.

13/ The Commission does not have separate data from roasters or information from initial processors that exclude data for their roasting operations. In the event of a final investigation, the Commission will seek data that separate roasting operations from initial processing. Since the remaining domestic nuts are roasted by the initial processors, in the event of a final investigation, the Commission also will seek information from the initial processors allocated on the basis of the initial processing operations as compared with the roasting operations.

14/ "Material injury" is defined as "[h]arm which is not inconsequential, immaterial, or unimportant." 19 U.S.C. § 1677(7)(A).

15/ The domestic producers argue that because of the special nature of the contractural arrangement between the processors and the growers, the processors do not bear any impact from the imports. Petition at 26; Tr. at 52. However, we have determined that there is a significant economic relationship between the growers and the processors of pistachio nuts. Therefore, we have examined the growers and processors in our injury determination.

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Commission has analyzed the pistachio nut industry in light of the cyclical nature of pistachio trees which causes the trees to have a heavy crop one year and a light crop in the next year.

During the period of investigation, U.S. consumption increased annually from 19 million pounds in 1981 to 47 million pounds in 1984. 16/ 17/ U.S. processors' production, domestic shipments, and exports also increased annually. 18/ U.S. processors' inventories of domestic nuts also increased annually from 5 million pounds at year-end 1982 to 18 million pounds at year-end 1984. 19/ Although data were limited, these data also show an increase in domestic employment. 20/

Between 1982 and 1984, net sales of in-shell, raw pistachio nuts steadily increased from $19 million to $46 million, or by 140 percent. 21/ However, during interim 1985, net sales dropped significantly. 22/ 23/ Operating income increased from $2 million, or 9.5 percent of net sales in 1982, to $4 million, or 10.1 percent of net sales in 1983, and remained stable at $4 million, or 7.7 percent of net sales in 1984. Operating income declined

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16/ However, it is also apparent that domestic production of pistachio nuts increased significantly during the period of investigation. Further increases in domestic production of pistachio nuts can be expected as substantial acreage is currently devoted to pistachio nut trees that will reach bearing age in the immediate future. Report at A-4. This issue as well as corresponding data on production in Iran will be examined more fully in the event of a final investigation.

17/ All dollar and pound figures in the opinion are rounded.

18/ Unlike the growers, the processors apparently were not affected by the cyclical nature of this industry because of their ability to carry-over their inventory from heavy to light crop years. See Report at A-10.

19/ Id. at A-14.

20/ Id. at A-15.

21/ Id. at A-18.

22/ Id. at A-19.

23/ Because of the limited number of processors submitting data for interim 1985, the data for net sales and operating income for that period are confidential and, therefore, will be discussed only in general terms.

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substantially during interim 1985, however, compared with the corresponding period of 1984. 24/

U.S. growers experienced increases in pistachio nut production throughout the period of investigation. Production increased in the heavy crop years, from 27 million pounds in 1980, to 43 million pounds in 1982, to 63 million pounds in 1984. Increases also occurred in the light crop years, from 15 million pounds in 1981 to 26 million pounds in 1983. 25/ Domestic shipments tracked production, increasing throughout the period of investigation. 26/ The limited data available from the growers also indicate increased employment during the period of investigation. 27/

Data obtained from 14 growers indicate that between 1982 and 1983 net sales fell from $45 million to $28 million, or by 38 percent, before rising by 26 percent to $35 million in 1984. Operating income followed a similar trend, dropping from $16 million, or 36.1 percent of net sales in 1982 to $414,000, or 1.5 percent of net sales in 1983, before rising to $7 million, or 19.3 percent of net sales in 1984. 28/

Based on the record in this preliminary investigation, we determine that there is no reasonable indication that the domestic industry is presently

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24/ Report at A-19. The Commission was able to obtain only limited data from processors; however, they represented over 60 percent of domestic capacity.
25/ Id. at A-10.
26/ Id.
27/ Id. at A-15.
28/ In this case, the petitioners argue that because supply cannot be controlled in the short term and fixed costs are substantial, the domestic pistachio nut industry can respond to low-priced import competition only by lowering its own prices. Therefore, petitioners argue traditional indicia of injury, such as production, shipments, and employment are irrelevant. According to petitioners, the growers' financial indicators, however, such as profitability and income are directly affected by the unfair import competition and reflect the injurious impact of allegedly dumped imports from Iran. Our analysis, however, indicates that the financial data do not provide a reasonable indication of present material injury.

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materially injured. While the industry does not yet show signs of material injury, the condition of the industry appears to be deteriorating.

Reasonable indication of the threat of material injury 29/

Section 612 of the Tariff and Trade Act of 1984 added a new subparagraph 771(7)(F) which directs the Commission to consider a number of factors in assessing the threat of material injury. 30/

Iran is the world's largest producer of pistachios. 31/ The data available to the Commission suggest that Iran is shifting this production from its domestic market to its export market. 32/ The Commission, however, has no information on Iranian capacity or capacity utilization. 33/

29/ Vice Chairman Liebeler joins in this section to the extent that it is consistent with the analysis set forth in her Additional Views, infra.

30/ In this antidumping investigation, the statute directs the Commission to consider the following factors:

> (II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,
> (III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,
> (IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,
> (V) any substantial increase in inventories of the merchandise in the United States,
> (VI) the presence of underutilized capacity for producing the merchandise in the exporting country,
> (VII) any other demonstrable adverse trends that indicate the probability that the importation . . . of the merchandise . . . will be the cause of actual injury . . . .

19 U.S.C. § 1677(7)(F)(i). We note that the statute does not limit our consideration to the listed factors but requires that at least those be considered.

31/ Report at A-21.

32/ Id. and Table 11.

33/ In the event of a final investigation, we ask the parties to provide any available information on this issue.

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A significant factor in our determination is the rapid increase in imports from Iran from 4 million pounds in 1982 to 21 million pounds in 1984. 34/ In January-August 1985, imports of pistachio nuts from Iran declined to 8 million pounds, as compared with 13 million pounds in January-August 1984. 35/ In addition to the absolute increase in imports, these imports as a share of U.S. consumption decreased from 19.8 percent in 1982, to 15.9 percent in 1983, and then increased sharply to 45.2 percent in 1984. 36/

Another significant factor in the Commission's determination was that data show a steady decline in prices for pistachios from Iran. There was a steady decline in unit value (per pound) of the imports from Iran, from $2.30 in 1982 to $1.89 in 1984. The unit value declined again to $1.32 per pound in January-August 1985, as compared with $1.89 in January-August 1984. 37/ 38/ Although the pricing data are limited, prices for the roughly comparable products indicate that consistent underselling has occurred during the period of investigation. 39/ 40/

34/ One reason for this sharp increase in imports from Iran was that there was an embargo in effect on goods from Iran from November 1979-January 1981. In the event of a final investigation, one issue will be whether the Commission should examine import data beyond the traditional three-year period because of the unusual factual situation in this case.

35/ Report at A-23.

36/ Id. at A-24.

37/ Id. at A-23. See note 16, supra, regarding increases in domestic production.

38/ In the event of a final investigation, the Commission would like to consider information on the cross price elasticity of pistachio nuts with other nuts.

39/ Report at A-28. This is based on a comparison of importers' resale prices to roasters with roasters' purchase prices for domestic raw, in-shell pistachio nuts. Roaster purchase prices differ from the aforementioned sale prices only in their inclusion of domestic shipping costs. Comparability between prices for domestic and imported raw, in-shell pistachio nuts is also limited by differences in the grades used for quoting prices.

40/ A question raised during the preliminary investigation is whether the California nuts command a premium over the imported nuts. In the event of a final investigation, the Commission will seek further pricing data at both the processor and roaster levels.

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Inventories of in-shell pistachio nuts from Iran also increased during the period of investigation. 41/ After declining from 620,000 pounds at year-end 1982 to 577,000 pounds at year-end 1983, inventories rose sharply to 1.2 million pounds at year-end 1984. Inventories at the end of 1984 were almost double those held at the end of 1982. 42/ 43/

Conclusion

Based on the information available, we determine that there is a reasonable indication that the domestic industry producing raw, in-shell pistachio nuts is threatened with material injury by reason of imports of raw, in-shell pistachio nuts from Iran, allegedly being sold in the United States at less than fair value.

41/ Report at A-20.
42/ Id.
43/ We note that importers' inventories, as a percentage of importers' shipments, have remained stable.

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ADDITIONAL VIEWS OF VICE CHAIRMAN LIEBELER

Based on the record in Investigation No. 731-TA-287 (Preliminary), I join with my colleagues in determining that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of raw, in-shell pistachio nuts from Iran that are allegedly sold at less than fair value (LTFV). I join in the majority's discussions of like product, domestic industry,[1] and condition of the domestic industry.

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[1]I would note that I have discussed the question whether the growers of an agricultural product should be included in the industry producing the processed product at length in Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final), USITC Pub. 1733 at 19-21 (1985) (Additional and Dissenting Views of Vice Chairman Liebeler) (Pork). The Commission in Pork used a two-prong test to determine whether to include the growers in the industry producing the processed product. Under the two-prong test, the Commission would include the growers only if there were both a single line of production and a formal integration of interests between growers and processors In those views, I argued that the first prong of the test made economic sense but that the second prong did not. Id. at 21. On the other hand, I noted

(Footnote continued to page 2)

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Because my views on causation differ from those of the majority, I offer these additional views, in which I set forth my reasons for finding a reasonable indication of a causal connection between the allegedly LTFV imports and the condition of the domestic industry.

In order for a domestic industry to prevail in a preliminary investigation the Commission must determine that there is a reasonable indication that the allegedly dumped imports cause or threaten to cause material injury to the domestic industry producing the like product. This analysis is usually

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(Footnote continued from page 1)
that the language of the statute and the legislative history might not allow the Commission to include growers in the industry producing the processed product in any case. Id. at 19. Therefore, I have invited attorneys to brief the issue whether the Commission can include growers in the industry producing the processed product, and if so, under what circumstances. For the time being I have looked only to see if there is a continuous line of production in preliminary investigations. Because essentially all pistachio nuts end up as snack food, I determine that for the purpose of this preliminary investigation the growers of pistachio nuts should be included in the industry producing raw, in-shell pistachio nuts.

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recognized to be a two-step procedure. First, the Commission must determine whether there is a reasonable indication that the domestic industry producing the like product is suffering or is threatened with material injury. Second, the Commission must determine whether there is a reasonable indication that any injury is by reason of the allegedly dumped imports. Only if the Commission answers both questions in the affirmative will it make an affirmative determination in the investigation.

In Certain Red Raspberries from Canada, I set forth a framework for examining causation in Title VII investigations:[2]

> The stronger the evidence of the following . . . the more likely that an affirmative determination will be made: (1) large and increasing market share, (2) high dumping margins, (3) homogeneous products, (4) declining prices and (5) barriers to entry to other foreign producers (low elasticity of supply of other imports).[3]

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[2]Inv. No. 731-TA-196 (Final), USITC Pub. 1680, at 11-19 (1985) (Additional Views of Vice Chairman Liebeler).

[3]Id. at 16.

These factors, when viewed together, serve as proxies for the inquiry that Congress has directed the Commission to undertake: whether foreign firms are engaging in unfair price discrimination practices that cause or threaten to cause material injury to a domestic industry.[4]

The starting point for the five factor approach is import penetration data. This factor is relevant because unfair price discrimination has as its goal, and cannot take place in the absence of, market power. Imports of raw, in-shell pistachio nuts from Iran as a share of domestic consumption have increased substantially during the 1980-84 period.[5] The United States market share held by imports from Iran increased from 6.3 percent in 1980

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[4]Trade Reform Act of 1974, S. Rep. 1298, 93rd Cong. 2d Sess. 179.

[5]It is unclear that a five-year period of investigation is appropriate in this case. Because of the time it takes for pistachio trees to mature, a longer period might be appropriate. The question of the appropriate period of investigation will be examined further if this case returns for a final investigation.

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to 16.2 percent in 1981 and increased again to 19.8 percent in 1982, before declining to 15.9 percent in 1983. The import penetration ratio then escalated to 45.2 percent in 1984.[6]

The second factor is a high margin of dumping. The margin of dumping is determined by the Department of Commerce, but only after the Commission has made an affirmative determination in the preliminary investigation. Consequently, no computed margins are currently available. Because title VII requires the Commission's determination in a preliminary investigation to be based on the best available evidence, I have been using the margins alleged by petitioners in preliminary investigations.[7] The higher the margin of dumping, ceteris paribus, the more likely it is that the product is being sold below marginal cost, which is a requirement for

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[6]Report at A-31, table 13.

[7]See, e.g., Certain Steel Wire Nails from the People's Republic of China, Poland, and Yugoslavia, Inv. Nos. 731-TA-266-268 (Preliminary), USITC Pub. No. 1730, 22 (1985) (Views of Vice Chairman Liebeler).

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predatory pricing, and the more likely it is that the domestic producers will be adversely affected by the dumping. Petitioners have alleged LTFV margins between 222 and 356 percent, which would be very large.[8]

The third factor is the homogeneity of the products. The more homogeneous are the products, the greater will be the effect of any allegedly unfair practice on domestic producers. Petitioner has alleged that raw, in-shell pistachios are fungible despite the variety of grades and sizes and dying to conceal blemishes because the end consumption is almost exclusively a snack food.[9] Furthermore, both domestic pistachios and pistachios imported from Iran are sold in the United States in all sizes and grades.[10] Pistachios imported from Iran, however, were sold at prices consistently below those of comparable domestic pistachios over the period

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[8]Petition at 3; Report at A-2.

[9]Petitioner's postconference brief at 8 and 23.

[10]Report at A-3.

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January 1984 to September 1985. Imported prices were lower than domestic prices by 10 to 35 percent.[11] Such price differences could be explained by differences between the domestic and imported product, whether it is in the characteristics of the product or the intangible aspects of the contract, such as delivery lags.[12] Thus, I cannot conclude whether raw, in-shell pistachios from Iran and the United States are fungible.

The fourth factor is declining prices. Evidence of declining domestic prices, ceteris paribus, might indicate that domestic producers were lowering their prices to maintain market share. The evidence available at this stage of the investigation indicates that the price of raw, in-shell pistachios has been declining over the period of the investigation.[13]

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[11] Id. at A-36.

[12] See Certain Table Wine from the Federal Republic of Germany, France, and Italy, supra note 5, at 35.

[13] Report at A-35-A-37, tables 15-17.

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The fifth factor is barriers to entry. The presence of barriers to entry makes it more likely that a producer can gain market power. Here, substantial barriers exist both in terms of time (the lead time for trees to mature to grow pistachios) and geography (specific climatic requirements).[14] West Germany, United Arab Emirates and Turkey, together only account for a negligible portion of total imports of raw, in-shell pistachio nuts.[15] Thus, it would likely take several years for significantly increased supplies to be available in the United States market.

The determination must be made on a case by case basis. At least four of the factors in the instant case favor an affirmative determination. There is evidence of a rapidly increasing market share for raw, in-shell pistachio nuts from Iran, declining prices, and significant barriers to entry.

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[14]See Petitioners' postconference brief at 24, note 1.

[15]Report at A-21, table 10.

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Furthermore, petitioners have alleged very large dumping margins. The only factor that may favor a negative determination is the issue of homogeneity, and here the evidence is equivocal. Therefore, I conclude that there is a reasonable indication that imports of raw, in-shell pistachios from Iran that are allegedly being sold at less than fair value threaten to cause material injury to the domestic industry.

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INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On September 26, 1985, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by counsel for the California Pistachio Commission; Blackwell Land Co.; California Pistachio Orchards; Keenan Farms, Inc.; Kern Pistachio Hulling & Drying Co-Op; Los Ranchos de Poco Pedro; Pistachio Producers of California; and T.M. Duche Nut Co., Inc., alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports from Iran of in-shell pistachio nuts, provided for in item 145.26 of the Tariff Schedules of the United States (TSUS), which are being, or are likely to be, sold in the United States at less than fair value (LTFV). 1/ Accordingly, effective September 26, 1985, the Commission instituted investigation No. 731-TA-287 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)). The purpose of the Commission's investigation is to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Iran of in-shell pistachio nuts that are allegedly sold at LTFV.

Notice of the institution of the Commission's investigation was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of October 3, 1985 (50 F.R. 40460). 2/ The Commission held a public conference in Washington, DC, on October 18, 1985, at which all interested parties were allowed to present information and data for consideration by the Commission. 3/ The Commission voted on this investigation at its meeting on November 5, 1985. The statute directs the Commission to make its determination within 45 days of the receipt of a petition, or in this case by November 12, 1985.

Nature and Extent of the Allegedly LTFV Sales 4/

The petition alleges that in-shell pistachio nuts from Iran are being sold in the United States at LTFV margins ranging from 222 percent to

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1/ Concurrently with this petition, petitioners also filed with Commerce a petition seeking the imposition of countervailing duties on imports of pistachio nuts from Iran. Iran is not a "country under the Agreement" (19 U.S.C. 1671(b)) and, therefore, the Commission is not required to reach a determination with respect to injury from allegedly subsidized imports. Consequently, the Commission did not institute a countervailing duty investigation with respect to the allegedly subsidized imports from Iran.

2/ A copy of the Commission's Federal Register notice is presented in app. A.

3/ A list of witnesses who appeared at the public conference is presented in app. B.

4/ In-shell pistachio nuts have not been the subject of any statutory investigations by the Commission.

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356 percent. 1/ The margins are based on comparisons of the U.S. price and the foreign-market value for in-shell pistachio nuts sized at 26 to 28 nuts per ounce from Iran, a size representative of the imports from Iran. Petitioners based the foreign-market value on a research study that analyzes price information obtained from various Government sources and special publications containing export data.

The Product

Description and uses

Pistachio nuts are a tree crop. The trees are deciduous (leaf dropping) and dioecious (the male trees are pollen bearing and the female trees are nut bearing) and yield nuts on an alternate bearing cycle in which 1 year's heavy crop is followed the next year by a light crop. 2/ The trees do not bear a significant crop until they are 7 to 10 years of age, and they do not reach maturity until they are 20 years of age. Mature pistachio trees bear at full capacity for up to 40 years.

When harvested, pistachios consist of an edible nutmeat surrounded by a hard shell, which is enclosed within a soft hull. The term "in-shell" pistachios refers to nuts from which the hulls have been removed, leaving the inner shell and the edible nutmeat. The dehulled nuts, which contain approximately 45 to 50 percent moisture content, must be dried before storage or exportation to a 4 to 6 percent moisture content to prevent spoilage. Nuts dried to a 4 to 6 percent moisture content are termed "raw" by the industry. 3/

Raw in-shell pistachios come in a variety of grades and sizes. There are three U.S. grades for raw, in-shell pistachios: "U.S. Fancy," "U.S. No. 1," and "U.S. No. 2," each with specified tolerances relating to damage and other defects. Most U.S. pistachios range in size from 21 to 24 in-shell nuts per ounce; those from Iran, on the average, are smaller. However, both U.S. pistachios and those imported from Iran are sold in the United States in all sizes and grades.

The raw pistachios, both domestic and imported, must undergo a further drying process (roasting) in which the moisture content is brought down to about 2 percent. 4/ Roasted pistachios may also be salted and dyed before

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1/ Petition, p. 3.

2/ The petition states that the off-year crop of a mature tree averages about 60 percent of the on-year crop size.

3/ The pistachio nuts imported from Iran are also raw, having been dried to the 4 to 6 percent moisture content necessary for exportation. In preparation for shipment, the nuts are sorted according to size and packed in bags of approximately 70 kilos each. No other processing is performed in Iran.

4/ The petition notes that pistachios can be consumed raw but are normally roasted.

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they are sold in the United States. 1/ Pistachios are consumed in the United States almost exclusively as a snack food. According to testimony at the Commission's conference, there is little demand for pistachios sold out of the shell as nut meats, 2/ and almost 90 percent of the crop is sold to consumers without having had the shell removed.

U.S. tariff treatment

The imported in-shell pistachio nuts that are the subject of this investigation are classified in item 145.26 of the TSUS. The rate of duty for imports of in-shell pistachio nuts from countries afforded most-favored-nation (MFN) treatment is currently 0.45 cent per pound; for imports from designated Communist countries, the current rate of duty is 2.5 cents per pound. Imported pistachio nuts from designated beneficiary countries are eligible for duty-free treatment under the Generalized System of Preferences, as are imports from eligible countries under the Caribbean Basin Economic Recovery Act.

On September 18, 1985, the U.S. Customs Service published in the Federal Register (50 F.R. 37842) a notice rescinding a previous ruling and issuing a new ruling with respect to the marking of pistachio nuts. 3/ Under the rescinded ruling, imported pistachio nuts that were processed by roasting did not subsequently need to be marked as products of the country of growth, but were instead considered a product of the country where the roasting was performed. The new ruling by Customs, which became effective October 18, 1985, changed those marking requirements. After further investigation, Customs decided that roasting; roasting and salting; or roasting, salting, and coloring of pistachio nuts, without further processing, do not result in a substantial transformation of the raw pistachio nuts into new and different articles of commerce. Accordingly, Customs ruled that the containers of such products must now be marked to indicate the country of origin (growth) of the raw products.

U.S. Growers

There are approximately 500 pistachio growers in the United States, most of them small. About nine entities 4/ accounted for between 60 and 70 percent

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1/ Methods of harvesting and sorting pistachios used by growers in Iran tend to cause shell blemishes. U.S. processors traditionally have dyed these pistachios red to conceal such blemishes. U.S. harvesting and processing methods, in contrast, prevent much of the shell bruising and blemishes and currently most California pistachios are marketed in their natural state.

2/ Transcript of the conference, p. 15. Pistachio nutmeats are used as flavorings in such products as ice cream, candy, dessert puddings, and baked goods.

3/ The Customs Service's Federal Register notice is presented in app. C.

4/ * * *. In the pistachio industry, a "ranch" is the business unit, and it may consist of a number of orchards.

of total production during crop year 1984. 1/ Nearly all of the U.S. pistachio crop (99 percent) is grown in California, where there are 46,984 acres of trees (30,597 acres of bearing trees and 16,387 acres of nonbearing trees) and where all initial processing of domestic nuts is performed (table 1).

Table 1.—California pistachio nuts: Bearing and nonbearing acreage and increase from previous year, 1980-84

Year	Bearing	Nonbearing	Total	Increase from previous year
1980	25,430	11,402	36,832	3,108
1981	27,514	13,712	41,226	4,394
1982	28,400	16,829	45,229	4,003
1983	31,060	15,738	46,798	1,569
1984	30,597	16,387	46,984	186

Source: California Crop and Livestock Reporting Service.

The area devoted to pistachio production in the United States has expanded rapidly since 1976, when the first commercial crop was harvested. 2/ Since 1980, total pistachio acreage has increased from 36,832 acres to 46,984 acres in 1984. From 1979 to 1982, new planting of pistachio trees increased by 11,505 acres, or over 3,800 acres annually. However, the expansion in pistachio tree planting has slowed significantly in more recent years. New plantings totaled only 1,569 acres in 1983 and only 186 acres in 1984. New plantings in 1985 are not expected to be as large as those in 1984 according to industry sources. Industry sources indicated that lower prices for in-shell pistachios has been the principal factor influencing growers' decisions not to expand plantings. 3/

U.S. Processors

Data are not available on the exact number of firms that process pistachio nuts, but it is believed that about 25 firms, located principally in California, provide the bulk of the processing. Within 24 hours after harvesting, the hull surrounding the pistachio must be removed to prevent staining and blemishing of the shell. The hulling and drying is generally performed by processors that purchase directly from the growers. 4/ Before distribution for sale to the consumer, pistachios are graded, sized, roasted and salted, and placed in consumer packages. Both of the last two steps may

1/ Pistachio nuts are harvested in September and October, so the U.S. crop year runs from Sept. 1 to Aug. 31.

2/ There were 4,350 acres of pistachio-bearing trees in 1976.

3/ Transcript, p. 42.

4/ Once pistachios have been hulled and dried, they may be stored for up to 1 year.

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be performed by the original processor or by roasters/salters and "rebaggers." Although growers and processors perform distinct functions, there is a significant amount of vertical integration. Some processing companies are owned by growers and some are cooperatives of growers; also, some processors own pistachio acreage. 1/

U.S. Importers

Approximately 25 firms imported in-shell pistachio nuts from Iran in 1984. The Commission received timely questionnaire responses from only six firms that accounted for less than 15 percent of the imports from Iran in 1984. 2/

The U.S. Market

Channels of distribution

Figure 1 traces the flow of domestically grown pistachio nuts from the tree to packaging. Once processed to the raw dry stage, the pistachios enter one of two chains of distribution. As indicated previously, the hulling and drying (to a 4 to 6 percent moisture content) is generally performed by processors that purchase directly from the growers. 3/ More than one-half of U.S.-grown pistachios are subsequently sold by the original processors to roasters that further dry the nuts (to about a 2 percent moisture content) and

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1/ Witnesses for the petitioners testified at the conference (transcript, pp. 16 and 109) that about 40 percent of the pistachio nuts grown domestically are processed by concerns related through interlocking ownership to the growers of the pistachios they process.

2/ Questionnaires were sent to 22 firms that, according to the U.S. Customs Service net importer file, imported in-shell pistachio nuts from Iran in fiscal years 1983 or 1984.

3/ A witness for the petitioners (who reported that his firm handles about 25 percent of the U.S. crop) testified at the conference (p. 58) that most contracts with growers are on a 5-year basis, although some run year to year. "The terms of a typical contract provide that we will take and market all, or a particular split of a grower's crop, because some of them will split their crop between other handlers, and pay to the grower a price dependent on a number of factors. First, we determine an opening price based on the size of the domestic crop, the carryover from the previous crop, competing import crops, and the price of competing nuts other than pistachios. We then assess the relative mix among the particular growers, crops of different grades, quality, sizes of pistachios, including whether the shell has split or is closed and must be shelled, and whether the shells are clean or stained. We then determine an average price from each grower based on what we think we can get in the market for the pistachios. Starting with this marketing price, we then take out our processing cost, plus some level of return, and then the difference is the price we will ultimately pay to our growers. Because we market pistachios throughout the year, we do not know the final actual price we will pay the grower until the end of the contract period."

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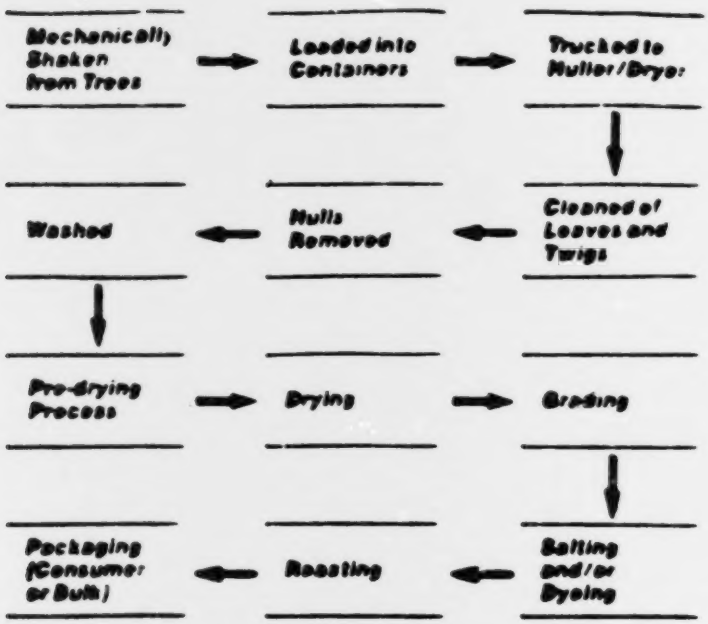
Figure 1.—Processing flowchart.



Source: California Pistachio Commission.

generally salt and sometimes dye them for ultimate distribution to consumers. Those domestic raw pistachios (i.e., those which have had the hulls removed and dried to a 4 to 6 percent moisture content) not sold by the original processor to roasters have similar additional processing operations performed on them by the original processor, who then either sells them to rebaggers, distributors, or retail outlets.

Imports of in-shell pistachio nuts from Iran enter the distribution process immediately after the step marked "Grading" on figure 1. Because these imported nuts need further processing, they are generally entered either by roasters/salters or by importers who in turn sell them to roasters/salters. After further processing (which generally includes dyeing them red in order to cover shell blemishes), 1/ the imported pistachios are sold to rebaggers, distributors, or retail outlets.

1/ Transcript, p. 57.

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Apparent U.S. consumption

Data published by the U.S. Department of Agriculture (USDA) on apparent U.S. consumption of pistachios (including those sold as shelling stock) during crop years 1981-84 (i.e., September 1 of a given year to August 31 of the following year) are shown in table 2. As indicated, such consumption rose from 24 million pounds in crop year 1981 to 44 million pounds in crop year 1983, or by 82 percent. Consumption again increased sharply in crop year 1984, rising to 79 million pounds, or 78 percent greater than consumption in crop year 1983.

Table 2.--Pistachio nuts: U.S. production, imports, exports, change in stocks, and apparent consumption, crop years 1981-84 1/

Crop year	U.S. production	Imports	Exports	Change in stocks	Apparent consumption	Ratio of imports to consumption
	1,000 pounds					Percent
1981	14,550	4,541	1,071	-6,400	24,420	18.6
1982	43,430	7,046	6,537	10,399	33,540	21.0
1983	26,455	16,704	4,120	-5,406	44,445	37.6
1984	61,950	34,127	6,173	10,582	79,322	43.0

1/ The crop year begins on Sept. 1 of the year shown and ends on Aug. 31 of the following year.

Source: U.S. Department of Agriculture, Foreign Agricultural Service, Horticultural and Tropical Products Division.

Data on apparent U.S. consumption of in-shell pistachio nuts on a calendar-year basis during 1974-85, are shown in table 3. 1/

1/ These data were obtained from table A-4 of exhibit 7 of the petition. Because data on processors' shipments were not available prior to crop year 1981 and because the petitioners did not have estimates of importers' inventories, they used two alternative methods of computing apparent consumption. One method was based on processors' shipments and the other was based on the annual domestic crop (annual crop deliveries of marketable in-shell pistachios minus exports). Both methods were adjusted to convert the data from a crop-year basis to a calendar-year basis. The two methods give roughly similar results, but the petitioners maintain that the latter gives a "more reasonable stream of consumption than does the other method, which suffers from swings in estimated inventory levels."

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Table 3.—In-shell pistachio nuts: Available domestic crop, imports for consumption, and apparent consumption, 1974-84, January-July 1985, and estimated 1985

Period	Available domestic crop 1/	Imports	Apparent consumption	Ratio to consumption— Domestic crop	Ratio to consumption— Imports
	1,000 pounds			Percent	
1974	0	25,181	25,181	-	100.0
1975	0	18,523	18,523	-	100.0
1976	264	19,428	19,692	1.3	98.7
1977	1,526	22,682	24,208	6.3	93.7
1978	2,571	16,311	18,882	13.6	86.4
1979	4,307	24,551	28,858	14.9	85.1
1980	11,613	845	12,458	93.2	6.8
1981	15,821	3,144	18,965	83.4	16.6
1982	14,637	6,233	20,870	71.1	29.9
1983	25,846	5,713	31,559	81.9	18.1
1984	25,350	21,776	47,126	53.8	46.2
1985: January-July	23,630	7,075	30,705	77.0	23.0
1985: 2/ Estimated	34,486	19,228	53,714	64.2	35.8

1/ Derived from annual crop deliveries of marketable in-shell pistachios minus exports, with an adjustment to convert crop year to calendar year deliveries.

2/ Based on the petitioner's estimate that the 1985 crop will be 60 percent of the 1984 crop. Also see footnotes to tables A-3 and A-4 in the petition.

Source: Table A-4 of Exhibit 7 of the petition.

Consideration of Alleged Material Injury to an Industry in the United States

The petitioners in this investigation maintain that "Because supply cannot be controlled in the short term and fixed costs are substantial, the domestic industry can respond to low priced import competition only by lowering its own prices. Thus, several of the traditional indicia of injury examined by the Commission, such as production, shipments and employment, are either irrelevant or very poor as barometers of economic health. And, because demand has been sufficient to absorb the increased levels of imports and the increased domestic production at prevailing prices (due to the elasticity of demand for pistachios), 1/ shipments and inventory data are unreliable as guides in assessing injury. Profitability, income, prices, investment and return on

1/ The petitioners estimate the price elasticity of demand for in-shell pistachio nuts at -1.87 (transcript of the conference, p. 85).

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investment, however, are directly affected by unfair import competition and reflect in this case the injurious impact of dumped imports from Iran." 1/

Moreover, petitioners maintain that "Because the processor pays the grower only what remains from the processor's selling price after the processor has covered his costs plus profit, the processors, to date, have been relatively insulated from the injurious affects of dumped imports. Thus, in assessing injury to the industry from imports, the Commission must focus primarily on the impact of imports on the grower sector." 2/

U.S. production

As indicated previously, the first commercial crop of pistachio nuts in the United States was harvested in 1976. Since that time, U.S. production has expanded greatly. Yield per acre also increased significantly as the trees matured and became more productive. In 1982, a heavy crop year, production was up 61 percent from that in 1980. In 1984, production rose an additional 45 percent from that in 1982. In 1983, a light crop year, production was up 82 percent from that in 1981, as shown in the following tabulation, which was compiled from data published by the USDA and the California Pistachio Commission:

Crop year	Production 1/ (1,000 pounds)	Bearing trees (acres)	Yield per acre (pounds)
1976	1,500	4,350	344
1977	4,500	8,830	510
1978	2,500	13,150	190
1979	17,200	20,880	824
1980	26,900	25,430	1,058
1981	14,500	27,514	527
1982	43,400	28,400	1,528
1983	26,400	31,060	850
1984	63,100	30,597	2,062

1/ In-shell basis; includes pistachios sold as nutmeats.

1/ Postconference brief of the petitioners, pp. 16-17. The petitioners contend that the relevant domestic industry consists of growers and the processors that hull and dry the pistachios. Petitioners also state that variable costs associated with pistachio cultivation constitute only 25 percent of total production costs, and add that supply is fixed by the size of each year's crop which, in turn, depends on investment decisions made 10 or more years earlier.

2/ Ibid., pp. 17-18.

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U.S. growers' shipments

Inasmuch as growers do not normally carry stocks of pistachio nuts, shipments by U.S. growers can be considered to be identical with production. For the heavy crop years, growers' shipments of in-shell pistachio nuts in 1982 totaled 37.5 million pounds, double the 18.6 million pounds shipped in 1980. In 1984, shipments reached 45.3 million pounds, up 21 percent from shipments in 1982. For the light crop years, shipments of in-shell pistachio nuts by growers in 1983 totaled 21.0 million pounds, up 86 percent from shipments in 1981. Pistachio nuts sold in the shell accounted for 70 percent or more of U.S. growers' total shipments during crop years 1980-84, as shown in the following tabulation (in thousands of pounds):

Crop year	Sold in the shell	Sold shelled	Total
1980	18,600	8,300	26,900
1981	11,300	3,200	14,500
1982	37,500	5,900	43,400
1983	21,000	5,400	26,400
1984	45,300	17,800	63,100

Figure 2 shows U.S. growers' shipments (production) of pistachio nuts (including those sold as shelling stock) during crop years 1976-84. As indicated by the 2-year running average of on- and off-year crops, growers' shipments trended upward throughout the period.

U.S. processors' shipments

Domestic shipments of in-shell pistachio nuts by U.S. processors increased annually during crop years 1981-84. Shipments by processors did not follow the year-to-year fluctuations of U.S. growers' shipments because processors hold inventories in the heavy crop years for sale in the light crop years. Domestic shipments of U.S.-grown in-shell pistachio nuts by processors during crop years 1981-84, as reported by the California Pistachio Commission and the California Crop and Livestock Reporting Service, are shown in the following tabulation (in thousands of pounds):

Crop year	Processors' domestic shipments
1981	13,765
1982	21,653
1983	22,070
1984 1/	27,917

1/ Data are for the first 9 months of the crop year, i.e., Sept. 1, 1984, through May 31, 1985.

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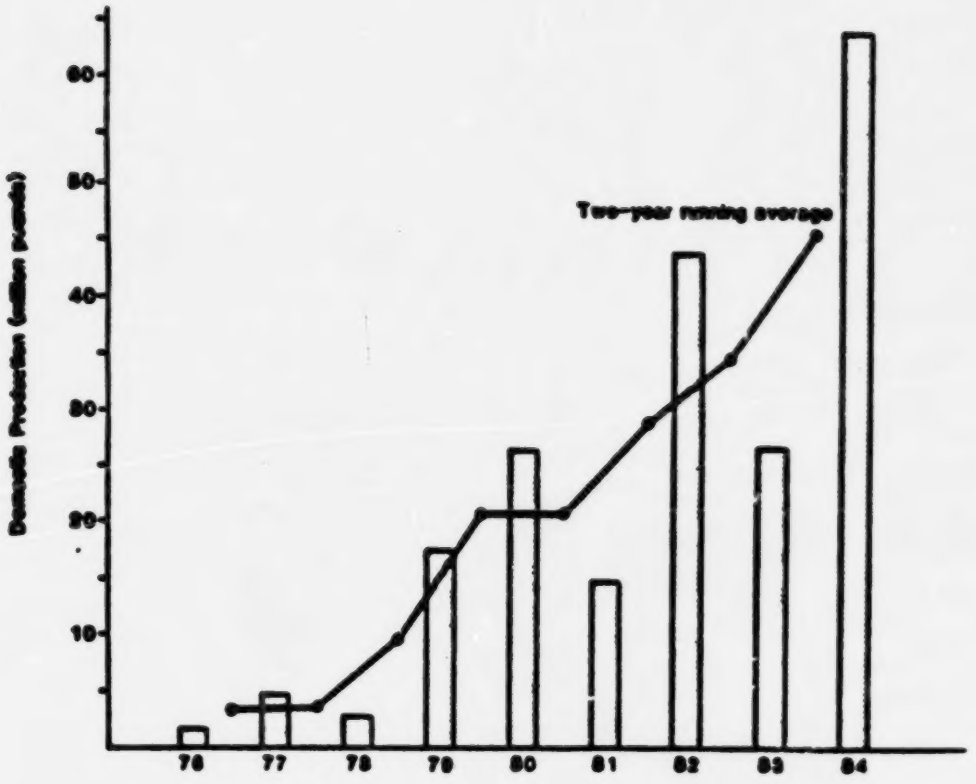
Figure 2.--Pistachio nuts: U.S. growers' shipments, crop years 1976-84.



Source: California Pistachio Commission

Data were obtained by questionnaire from five firms that accounted for about one-half of the shipments by all processors in 1983. Shipments by the responding firms increased annually from 6.8 million pounds in 1982 to 14.7 million pounds in 1984. During January-September 1985, shipments by processors increased to 9.7 million pounds, up from 7.4 million pounds during January-September 1984. Table 4 shows shipments by these five processors, as well as their purchases of in-shell pistachios from U.S. growers.

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Table 4.—In-shell pistachio nuts: U.S. processors' domestic shipments and purchases from domestic growers, 1982-84, January-September 1984, and January-September 1985

Item	1982	1983	1984	January-September—	
				1984	1985
Purchases from U.S. growers:					
Quantity——1,000 pounds—	11,439	9,265	19,453	17,262	10,960
Value———1,000 dollars—	17,176	16,178	24,139	21,792	16,085
Unit value 1/—per pound—	$1.50	$1.75	$1.24	$1.26	$1.47
Domestic shipments by processors:					
Quantity——1,000 pounds—	6,755	10,855	14,680	7,419	9,727
Value———1,000 dollars—	18,163	30,660	37,165	20,853	22,343
Unit value 2/—per pound—	$2.69	$2.82	$2.53	$2.81	$2.30

1/ Average value paid to growers.
2/ Average value received by processors.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. exports

U.S. exports of pistachio nuts increased from 2.8 million pounds in 1982 to 3.9 million pounds in 1983, or by 41 percent, and then declined to 3.0 million pounds, or by 24 percent, in 1984 (table 5). Exports during January-August 1985 totaled 2.4 million pounds, up 57 percent from exports during January-August 1984. Principal markets for U.S. exports included Canada, Japan, Australia, Mexico, and the People's Republic of China. As a share of shipments by U.S. growers (based on crop year production data), exports increased from 6 percent in 1982 to 15 percent in 1983, and then declined to 5 percent in 1984.

U.S. processors' inventories

Inventory data were received by questionnaire from five firms that accounted for about 60 percent of total shipments of domestic in-shell pistachio nuts by processors in 1983. Inventories of domestic pistachios held by the responding firms increased annually from 4.7 million pounds at yearend 1982 to 7.7 million pounds at yearend 1983 and 17.7 million pounds at yearend 1984, the year of peak U.S. production. Many processors maintain inventories

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Table 5.—Pistachio nuts: U.S. exports 1/ of domestic merchandise, by principal markets, 1982-84, January-August 1984, and January-August 1985

Market	1982	1983	1984	January-August — 1984	January-August — 1985
	Quantity (1,000 pounds)				
Canada	190	282	570	396	220
Japan	46	274	317	229	278
Australia	35	230	311	174	127
Mexico	320	21	207	59	236
People's Republic of China	176	132	201	33	80
France	326	480	185	88	57
Israel	72	416	138	138	0
Taiwan	0	5	135	0	44
United Kingdom	22	227	132	80	166
Belgium	82	24	122	0	739
West Germany	407	548	92	0	202
All other	1,078	1,243	540	352	281
Total	2,754	3,881	2,951	1,547	2,430
	Value (1,000 dollars)				
Canada	229	676	1,286	892	464
Japan	112	538	766	580	626
Australia	97	580	751	476	275
Mexico	784	31	346	152	434
People's Republic of China	141	136	138	32	40
France	772	1,112	408	178	102
Israel	185	1,019	73	73	-
Taiwan	-	7	87	-	86
United Kingdom	53	649	292	178	307
Belgium	192	56	232	-	1,016
West Germany	860	1,249	198	-	370
All other	2,378	2,749	1,319	907	558
Total	5,803	8,802	5,896	3,468	4,278

See footnote at end of table.

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Table 5.—Pistachio nuts: U.S. exports 1/ of domestic merchandise, by principal markets, 1982-84, January-August 1984, and January-August 1985—Continued

Market	1982	1983	1984	January-August—	
				1984	1985
	Unit value (per pound)				
Canada	$1.21	$2.40	$2.26	$2.25	$2.11
Japan	2.45	1.96	2.42	2.52	2.24
Australia	2.78	2.51	2.42	2.73	2.16
Mexico	2.45	1.53	1.68	2.59	1.84
People's Republic of China	.80	1.03	.69	.96	.50
France	2.37	2.32	2.21	2.02	1.77
Israel	2.58	2.45	.53	.53	-
Taiwan	-	1.48	.64	-	1.94
United Kingdom	2.40	2.86	2.21	2.22	1.85
Belgium	2.36	2.30	1.90	-	1.37
West Germany	2.11	2.28	2.16	-	1.84
All other	2.21	2.21	2.44	2.58	1.99
Average	2.11	2.27	2.00	2.24	1.76

1/ Includes Schedule B Nos. 145.3520, 145.5720, and 145.7520.

Source: Compiled from official statistics of the U.S. Department of Commerce.

in order to supply their customers following light crop years. 1/ As a share of shipments by the responding firms, inventories increased irregularly from 74.6 percent in 1982 to 115.6 percent in 1984, as shown in the following tabulation:

	Yearend inventories 1/ (1,000 pounds)	Shipments 2/ (1,000 pounds)	Ratio, inventories to shipments (Percent)
1982	4,675	6,266	74.6
1983	7,679	13,832	55.5
1984	17,743	15,342	115.6

1/ As of Dec. 31.
2/ Shipments by the firms that held inventories.

1/ As noted previously, raw pistachio nuts may be held in inventory for up to a year. During the conference, one large processor testified that it carried over into the 1985 season approximately one-third of its 1984 crop.

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Employment and wages

Both U.S. growers and processors had difficulty in providing the employment data requested in the Commission's questionnaires. None of the responding firms are engaged solely in growing or processing pistachio nuts. 1/ Data obtained from six growers show that average employment in these firms increased from 79 production and related workers in 1982 to 83 workers in 1984 (table 6). Employment during January-September 1985 was down by two workers from the January-September 1984 level. Average annual hours worked by each production and related worker amounted to 2,633 in 1982; 2,500 in 1983; and 2,566 in 1984. Hourly wages paid to production workers by the responding growers averaged $5.67 in 1982; $5.55 in 1983; and $5.27 in 1984.

Table 6.—In-shell pistachio nuts: Average number of production and related workers reported by U.S. growers and processors and hours worked by and wages paid to such employees, 1982-84, January-September 1984, and January-September 1985

Item	1982	1983	1984	Jan.-Sept—	
				1984	1985
Production and related workers employed by growers: 1/					
Average number	79	82	83	79	77
Hours worked—1,000 hours	208	205	213	206	199
Wages paid—1,000 dollars	1,179	1,137	1,122	1,117	1,078
Production and related workers employed by processors: 2/:					
Average number	99	101	179	163	149
Hours worked—1,000 hours	126	141	153	70	80
Wages paid—1,000 dollars	506	570	955	458	598

1/ Data are for 6 firms.
2/ Data are for 4 firms.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Data obtained from four processors show an annual increase in employment from 99 production and related workers in 1982 to 179 workers in 1984, or by 81 percent. The number of production workers employed by the responding processors in January-September 1985 dropped by 14 employees, or 9 percent, from employment in January-September 1984. Hours worked by production workers processing pistachio nuts averaged 1,273 in 1982; 1,396 in 1983; and 855 in 1984. Wages paid to production workers by processors averaged $4.02 per hour in 1982; $4.04 per hour in 1983; and $6.24 per hour in 1984.

1/ Other products grown and/or processed include walnuts, almonds, olives, figs, and vegetables.

Financial experience of U.S. growers

Fourteen growers furnished usable income-and-loss data concerning both their overall farm operations and their operations growing pistachio nuts.

Overall farm operations.--Net sales of all products produced on the farms on which pistachio nuts are grown declined from $95.2 million to $72.7 million, or by 24 percent, between 1982 and 1983 (table 7). Net sales rose slightly to $74.7 million during 1984. The 14 growers earned an aggregate operating income of $9.8 million, or 10.3 percent of net sales, in 1982. In 1983 and 1984, they sustained operating losses of $11.5 million, or 15.8 percent of net sales, and $9.0 million, or 12.0 percent of net sales, respectively. Three growers sustained operating losses in 1982; six growers sustained such losses in 1983, as did two growers in 1984. The 14 growers reported a positive cash-flow of $18.6 million in 1982. In 1983 and 1984, they sustained negative cash-flows of $2.7 million and $531,000, respectively.

Table 7.--Income-and-loss experience of 14 U.S. growers of pistachio nuts on the overall operations of their farms, 1982-84

Item	1982	1983	1984
Net sales--1,000 dollars--	95,200	72,671	74,654
Cost of goods sold--do--	66,934	67,152	64,706
Gross income--do--	28,266	5,519	9,948
General, selling, and administrative expenses 1,000 dollars--	18,463	17,029	18,917
Operating income or (loss)--do--	9,803	(11,510)	(8,969)
Depreciation and amortization 1/--do--	8,783	8,792	8,438
Cashflow from operations--do--	18,586	(2,718)	(531)
Ratio to net sales:			
Gross income--percent--	29.7	7.6	13.3
Operating income or (loss)--do--	10.3	(15.8)	(12.0)
Cost of goods sold--do--	70.3	92.4	86.7
General, selling, and administrative expenses percent--	19.4	23.4	25.3
Number of growers reporting operating losses	3	6	2

1/ Depreciation and amortization data are for 10 growers.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Pistachio operations.--Net sales of pistachio nuts by the 14 growers fell from $45.3 million to $27.9 million, or by 38 percent, between 1982 and 1983 before rising by 26 percent to $35.2 million in 1984 (table 8). Operating income followed a similar trend, dropping from $16.4 million, or 36.1 percent of net sales, in 1982 to $414,000, or 1.5 percent of net sales, in 1983 before rising to $6.8 million, or 19.3 percent of net sales, in 1984. Cashflow followed the same trend as operating income, dropping from $19.1 million in

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Table 8.—Income-and-loss experience of 14 U.S. growers on their operations growing pistachio nuts, 1982–84

Item	1982	1983	1984
Net sales—1,000 dollars—	45,345	27,903	35,219
Cost of goods sold—do—	22,799	22,371	22,855
Gross income—do—	22,546	5,532	12,364
General, selling, and administrative expenses 1,000 dollars—	6,170	5,118	5,570
Operating income—do—	16,376	414	6,794
Depreciation and amortization 1/—do—	2,750	3,152	3,165
Cash flow from operations—do—	19,126	3,566	9,959
Ratio to net sales:			
Gross income—percent—	49.7	19.8	35.1
Operating income—do—	36.1	1.5	19.3
Cost of goods sold—do—	50.3	80.2	64.9
General, selling, and administrative expenses percent—	13.6	18.3	15.8
Number of growers reporting operating losses—	1	7	2

1/ Depreciation and amortization data are for 10 growers.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

1982 to $3.6 million in 1983 and then rising to $10.0 million in 1984. One grower sustained an operating loss in 1982; seven growers sustained such losses in 1983, as did two growers in 1984.

Financial experience of U.S. processors

Five processors furnished usable income-and-loss data concerning both their overall establishment operations and their operations processing in-shell pistachio nuts. 1/

Overall establishment operations.—Net sales of all products produced in the establishments within which pistachio nuts are processed rose annually from $322 million to $455 million, or by 41 percent, during 1982–84 (table 9). Net sales declined 20 percent to $*** during interim 1985, compared with net sales of $*** during the corresponding period of 1984. Net sales of pistachio nuts accounted for 6 to 10 percent of total establishment net sales in each year during 1982–84.

1/ Only three firms supplied data for the interim periods ended Sept. 30, 1984, and Sept. 30, 1985.

Table 9.--Income-and-loss experience of 5 U.S. processors on the overall operations of their establishments within which pistachio nuts are processed, 1982-84, and interim periods ended Sept. 30, 1984, and Sept. 30, 1985 1/

Item	1982	1983	1984	Interim period ended Sept. 30—	
				1984	1985
Net sales----1,000 dollars—	322,428	402,882	454,579	***	***
Cost of goods sold----do----	272,322	346,504	379,061	***	***
Gross income----------do----	50,106	56,378	75,518	***	***
General, selling, and administrative expenses 1,000 dollars—	35,399	35,574	52,579	***	***
Operating income--------do—	14,707	20,804	22,939	***	***
Depreciation and amortization 2/----1,000 dollars—	5,508	7,104	6,103	***	***
Cashflow from operations 1,000 dollars—	20,215	27,908	29,042	***	***
Ratio to net sales:					
Gross income-----percent—	15.5	14.0	16.6	***	***
Operating income----do----	4.5	5.2	5.0	***	***
Cost of goods sold--do----	84.5	86.0	83.4	***	***
General, selling, and administrative expenses-------percent—	11.0	8.8	11.6	***	***
Number of processors reporting operating losses----------	1	1	0	1	0

1/ * * *.

2/ Depreciation and amortization data are for 3 firms in 1982, interim 1984, and interim 1985, and for 4 firms in 1983 and 1984.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Operating income followed the same trend as net sales, rising from $14.7 million, or 4.5 percent of net sales, in 1982 to $22.9 million, or 5.0 percent of net sales, in 1984, and then slipping to $***, or *** percent of net sales, during interim 1985, compared with an operating income of $***, or *** percent of net sales, during the corresponding period of 1984. One firm operated unprofitably in 1982, 1983, and interim 1984.

In-shell pistachio nuts.--Net sales of in-shell pistachio nuts followed the same trend as total establishment net sales during the reporting period, rising from $19.0 million to $45.8 million, or by 140 percent, during 1982-84 and then dropping 36 percent to $*** during interim 1985, compared with net sales of $*** during the corresponding period of 1984 (table 10). Operating income was $1.8 million, or 9.5 percent of net sales, in 1982; $3.5 million,

Table 10.--Income-and-loss experience of 5 U.S. processors on their operations processing in-shell pistachio nuts, 1982-84, and interim periods ended Sept. 30, 1984, and Sept. 30, 1985 1/

Item	1982	1983	1984	Interim period ended Sept. 30-- 1984	1985
Net sales----1,000 dollars---	19,041	34,760	45,755	***	***
Cost of goods sold----do----	15,393	29,561	39,143	***	***
Gross income----------do----	3,648	5,199	6,612	***	***
General, selling, and administrative expenses 1,000 dollars---	1,839	1,683	3,085	***	***
Operating income----do----	1,809	3,516	3,527	***	***
Depreciation and amortization 2/----1,000 dollars---	***	***	***	***	***
Cashflow from operations 1,000 dollars---	***	***	***	***	***
Ratio to net sales:					
Gross income----percent---	19.2	15.0	14.5	***	***
Operating income----do----	9.5	10.1	7.7	***	***
Cost of goods sold---do----	80.8	85.0	85.5	***	***
General, selling, and administrative expenses----------percent---	9.7	4.9	6.8	***	***
Number of processors reporting operating losses----------	1	1	1	2	0

1/ * * *.

2/ Depreciation and amortization data are for 2 firms in 1982 and for 3 firms in the other reporting periods.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

or 10.1 percent of net sales, in 1983; and $3.5 million, or 7.7 percent of net sales, in 1984. Operating income declined to $***, or *** percent of net sales, during interim 1985, compared with an operating income of $***, or *** percent of net sales, during the corresponding period of 1984. One processor sustained an operating loss in each year during 1982-84 and two processors sustained such losses during interim 1984. Cash flow from operations rose from $*** to $*** during 1982-84, but then declined to $*** during interim 1985, compared with $*** during the corresponding period of 1984.

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Capital and investment

U.S. growers and processors were asked to describe any actual or potential negative effects of imports of pistachio nuts from Iran on their firm's growth, investment, and ability to raise capital.

* * * * * * *

Consideration of Alleged Threat of Material Injury to an Industry in the United States

In its examination of the question of the threat of material injury to an industry in the United States, the Commission may take into consideration such factors as the rate of increase in allegedly LTFV imports, the rate of increase in U.S. market penetration by such imports, the amounts of imports held in inventory in the United States, and the capacity of producers in the country subject to the investigation to generate exports (including the availability of export markets other than the United States). A discussion of U.S. market penetration of imports of in-shell pistachio nuts from Iran is presented in the section of this report entitled "Consideration of the Causal Relationship Between Alleged Material Injury or the Threat Thereof and Allegedly LTFV Imports." Discussions of the available information concerning inventories of in-shell pistachio nuts from Iran and that country's capacity to generate exports follow.

Inventories of imported in-shell pistachio nuts

Four importers and one U.S. processor reported inventories of in-shell pistachio nuts from Iran. Inventories, as reported by these firms, declined from 620,000 pounds at yearend 1982 to 577,000 pounds at yearend 1983, or by 7 percent, and then rose to 1.2 million pounds at yearend 1984. Inventories at the end of 1984 were almost double those held at the end of 1982. As a share of shipments of imported in-shell pistachio nuts from Iran by the responding firms, yearend inventories remained stable at 32 percent, as shown in the following tabulation:

	Yearend inventories 1/ (1,000 pounds)	Shipments 2/ (1,000 pounds)	Ratio, inventories to shipments (Percent)
1982	620	1,927	32.2
1983	577	1,789	32.2
1984	1,238	3,812	32.4

1/ As of Dec. 31.
2/ Shipments by the firms that supplied inventory data.

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Capacity of producers in Iran to generate exports

Iran is the world's largest producer of pistachio nuts. 1/ According to data published by the USDA, commercial production of pistachio nuts in Iran averaged about 43 million pounds per year during crop years 1968-77. Although pistachio production displayed its usual alternating cycle during this period, production did trend upward. Production peaked at 132 million pounds in crop year 1978, but then plummeted to 22 million pounds in 1979, apparently because of a severe frost during that year. Production partially recovered to 55 million pounds in 1980 and then rose to almost 92 million pounds in 1981 (table 11). In 1982, production dropped to 50 million pounds, then increased in 1983 to 86 million pounds. Although data are not available for 1984, production in Iran was reportedly less than that in 1983. 2/

Table 11.--Pistachio nuts: Iran's production and exports, 1980-84

Item	1980	1981	1982	1983	1984
Production----1,000 pounds--	55,100	91,500	49,600	86,000	1/
Exports to:					
United States----do----	788	3,075	4,123	5,008	21,309
All others----do----	***	***	5,136	***	***
Total----do----	***	***	***	***	***
Ratio to total exports of exports to -					
United States----percent--	***	***	***	***	***
All others----do----	***	***	***	***	***
Total----do----	100.0	100.0	100.0	100.0	100.0
Ratio of total exports to production----do----	***	***	***	***	1/

1/ Not available.

Source: Production, compiled from official statistics of the U.S. Department of Agriculture; total exports, exhibit 4, table 2.2, of the petition; exports to the United States, official U.S. imports, as reported by the U.S. Department of Commerce.

1/ The United States now appears to be the second largest producer; other major producers include Turkey, Greece, Syria, and Italy. In Iran, pistachio nuts are grown on about 40,000 farms that average about 3 hectares (about 7.4 acres) each (petition, exhibit 4). In contrast to the largely mechanized production process in the United States, production methods in Iran are reported to be very labor intensive.

2/ On the basis of USDA data, heavy crop years in Iran have traditionally occurred in even-numbered years, the same as in the United States. However, testimony was presented at the Commission's conference (transcript, pp. 121 and 122) (also see exhibit 4 of the petition) that the severe frost that occurred in Iran in 1979 may have reversed the off-year/on-year production cycle in that country, with the heavy crop of the Iranian production cycle now occurring in odd-numbered years.

Total exports from Iran increased from *** pounds in 1980 to *** pounds in 1981, slipped to *** pounds in 1982, and increased thereafter, reaching *** pounds in 1984. 1/ Exports to the United States, as a share of total exports from Iran in recent years, rose irregularly from a low of *** percent in 1980 to a high of *** percent in 1984. As a share of production in Iran, total exports increased from *** percent in 1980 to *** percent in 1982, then decreased to *** percent in 1983.

Consideration of the Causal Relationship Between Alleged Material Injury or the Threat Thereof and Allegedly LTFV Imports

U.S. imports

Total U.S. imports of in-shell pistachio nuts increased from 845,000 pounds in 1980 2/ to 6.2 million pounds in 1982, then declined to 5.7 million pounds in 1983. In 1984, they climbed to 21.8 million pounds, nearly four times the level of imports in 1983. Iran was by far the principal supplier, accounting for 93 percent of total imports in 1980, 98 percent in 1981, 66 percent in 1982, 88 percent in 1983, and 98 percent in 1984 (table 12).

1/ The data shown in table 11 for total exports are those presented in table 2.2, exhibit 4, of the petition. The petition states that such information was obtained on a confidential basis * * *. In the above table, total exports in any year shown are those shown in the petition on the basis of the Iranian year, which begins on Mar. 20. In comparison, exports of pistachio nuts from Iran during Iranian years 1974/75 through 1978/79 were as follows: 1974/75--*** pounds, 1975/76--*** pounds, 1976/77--*** pounds, 1977/78--*** pounds, and 1978/79--*** pounds.

2/ In November 1979, the United States imposed an embargo on trade with Iran in all but essential articles. It was not until January 1981 that the embargo was lifted and trade with Iran resumed. U.S. imports of in-shell pistachio nuts, total and from Iran, during 1971-79 were as follows (in millions of pounds):

Year	Total	From Iran
1971	25.2	16.4
1972	17.6	11.4
1973	33.6	24.2
1974	25.2	22.6
1975	18.5	14.1
1976	19.4	12.4
1977	22.7	20.1
1978	16.3	14.3
1979	24.6	24.1

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Table 12.—In-shell pistachio nuts: U.S. imports for consumption, by principal sources, 1980-84, January-August 1984, and January-August 1985

Source	1980	1981	1982	1983	1984	January-August 1984	January-August 1985
	Quantity (1,000 pounds)						
Iran	788	3,075	4,123	5,008	21,309	12,689	7,917
West Germany	0	0	91	142	170	40	126
United Arab Emirates	0	0	126	0	151	151	209
Turkey	53	22	1,836	462	146	123	14
All other	4	47	57	101	1	1	41
Total	845	3,144	6,233	5,713	21,776	13,004	8,307
	Value (1,000 dollars)						
Iran	2,349	7,392	9,469	11,104	40,289	23,986	10,480
West Germany	–	–	193	276	263	76	216
United Arab Emirates	–	–	298	–	276	276	306
Turkey	133	58	3,127	784	308	239	28
All other	3	114	136	213	2	2	39
Total	2,485	7,564	13,223	12,377	41,139	24,579	11,069
	Unit value (per pound)						
Iran	$2.98	$2.40	$2.30	$2.22	$1.89	$1.89	$1.32
West Germany	–	–	2.12	1.95	1.55	1.89	1.72
United Arab Emirates	–	–	2.36	–	1.83	1.83	1.47
Turkey	2.48	2.57	1.70	1.70	2.11	1.93	1.99
All other	.75	2.43	2.39	2.11	1/ 2.68	1/ 2.68	.95
Average	2.94	2.41	2.12	2.17	1.89	1.89	1.33

1/ Calculated from the unrounded numbers.

Source: Compiled from official statistics of the U.S. Department of Commerce.

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Market penetration by the allegedly LTFV imports

The share of the U.S. market for in-shell pistachio nuts supplied by imports from Iran increased substantially during 1980-84. U.S. market share by those imports increased from 6.3 percent in 1980 to 16.2 percent in 1981 and 19.8 percent in 1982, declined to 15.9 percent in 1983, and rose to 45.2 percent in 1984 (table 13). As indicated previously, prior to 1976, virtually all domes[illegible] consumption of pistachio nuts was supplied by imports, principally those from Iran, and imports supplied 85 percent of more of consumption during 1976-79 (table 3).

Table 13.--In-shell pistachio nuts: Share of U.S. consumption supplied by Iran, all other countries, and U.S. producers, 1980-84

Item	1980	1981	1982	1983	1984
U.S. consumption					
1,000 pounds—	12,458	18,965	20,870	31,559	47,126
Share of U.S. consumption supplied by—					
Iran——————percent—	6.3	16.2	19.8	15.9	45.2
All other countries—do——	.5	.4	10.1	2.2	1.0
Total imports——do——	6.8	16.6	29.9	18.1	46.2
U S. producers——do——	93.2	83.4	71.1	81.9	53.8

Source: Compiled from official statistics of the U.S. Department of Commerce and the data shown in table 3.

Note.--Because of rounding, figures may not add to the totals shown.

Prices

Price information was collected from various sources--secondary data sources for returns received by pistachio growers and from the Commission's questionnaires for prices received and/or paid by pistachio processors (hullers and dryers), roasters, and importers. Grower prices were collected from data provided by the USDA's Crop and Livestock Reporting Service. Domestic processors were asked for data on prices received for raw, in-shell pistachios sold to roasters. Roasters were asked to provide prices paid for raw, in-shell pistachios purchased from domestic sources and for pistachios imported directly from Iran. 1/ Importers were requested to give prices paid for comparable products imported from Iran and resale prices if these pistachios were then sold to domestic roasters. Prices were requested for the largest transactions in each quarter from January-March 1984 through July-September 1985. Respondents were asked to provide separate price

1/ However, no price data for direct purchases of imported raw pistachios by roasters were obtained.

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information for each of four size categories—extra large (18-20 count), large (21-24 count), medium (24-26 count), and small (28-32 count). Information was also requested on shipping costs. Usable price information was collected from four importers, two processors, and one roaster.

Domestic grower returns.--USDA officials began keeping records of domestic production and prices of raw pistachios in 1977. Table 14 presents data on pistachio production and returns received by growers in California during crop years 1977-84.

Table 14.—Production of California pistachios and average returns received by growers, 1/ crop years 1977-84

Crop year	Production			Average return to grower
	In-shell	Shelled	Total	
	1,000 pounds (in-shell)			Per pound
1977	4,500	2/	4,500	$1.04
1978	2,500	2/	2,500	1.24
1979	17,200	2/	17,200	1.60
1980	18,600	8,300	26,900	2.05
1981	11,300	3,200	14,500	1.36
1982	37,500	5,900	43,400	1.45
1983	21,000	5,400	26,400	1.42
1984	45,300	17,800	63,100	.95

1/ All pistachios, split and unsplit, in-shell and shelled.
2/ Data not available.

Source: U.S. Department of Agriculture, Crop and Livestock Reporting Service.

For the 1977 crop year, domestic growers received an average return 1/ of $1.04 per pound for about 4.5 million pounds of pistachios of all grades, both in-shell and shelled nuts. The supply of domestic, in-shell pistachios was estimated at about 2.6 million pounds for 1978, compared with imports in 1978 of over 16 million pounds. 2/ A sharp decline in pistachio imports, to less than 1 million pounds, occurred during calendar year 1980 as a result, in part, of the embargo placed on U.S. imports from Iran. 3/ Grower returns on the 1979 crop (realized largely in 1980) increased to $1.60 per pound, and

1/ These returns are an average of payments made to growers; the payments are distributed over the year following each harvest as processors (hulling and drying operators) realize sales to roasters.
2/ Estimate, California Pistachio Commission. Calculated using 1977 crop estimate, deducting exports, and converting to a calendar-year basis.
3/ Reference was made previously to a severe frost that apparently greatly reduced the production of pistachios in Iran in crop year 1979.

during the following year, returns surpassed $2.00 per pound. In 1980, the domestic supply of in-shell pistachios, estimated at 11.6 million pounds, was less than one-half of the 24.6 million pounds imported during 1979, the year prior to the embargo. After the embargo was lifted in January 1981, prices received by domestic growers of pistachios fell to much lower levels. Returns averaged around $1.40 per pound for crop years 1981-83 and then dropped below $1.00 per pound for the crop of 1984. Growth in domestic production of pistachios, measured between alternate years because of the 2-year bearing cycle for this crop, continued to be substantial during 1980-84. Production rose by 61 percent between 1980 and 1982, followed by an increase of 45 percent between 1982 and 1984. These increases in domestic output have coincided with a period during which there has been downward pressure on grower returns. Further, returns to domestic growers have not increased during the two most recent off-years. Returns earned during 1982 on the 1981 (off-year) crop declined as imports recovered to over 6 million pounds, as Iran was able to recover a portion of the U.S. market it had lost. During 1984, following an off-year domestic crop in 1983, Iranian imports exceeded 21 million pounds, a level approximately equal to average annual U.S. imports during 1974-79.

Returns earned by domestic growers on the 1984 crop also may have been affected by the relatively high proportion of unsplit nuts harvested in 1984, as suggested by the percentage of shelled nuts sold--over 28 percent. 1/ Shelled pistachios typically command a significantly lower price per pound (in-shell basis) than do in-shell pistachios. 2/

Domestic prices.--Two domestic processors of pistachios supplied data on prices received from roasters of raw pistachios and one domestic roaster provided data on prices paid to processors for pistachios from California (table 15). Prices reported by the processors were lower than prices paid by the roaster for each grade. This may be due, in part, to the fact that processor prices do not include shipping charges, whereas roaster prices are inclusive of shipping charges. Survey data collected indicate that shipping charges average between 5 and 10 cents per pound.

Data on processor sales were provided for large and extra-large pistachios only. Extra-large pistachios (18-20 count) commanded a price of about $*** per pound for the first 9 months of 1984. The price then dropped sharply to below $*** per pound during October-December 1984 and January-March 1985. A modest recovery, to about $*** per pound, occurred in July-September 1985. Prices for large pistachios (21-25 count) followed a similar pattern, dropping from $*** per pound at the start of 1984 to $*** per pound in January-March 1985, before recovering to $*** per pound in July-September 1985.

1/ On the basis of the data in the tabulation at the top of p. A-10, shelled nuts accounted for the following share of total shipments of U.S.-grown pistachios in the following crop years: 1980--31 percent, 1981--22 percent, 1982--14 percent, 1983--20 percent, and 1984--28 percent.

2/ A witness for the petitioners testified during the conference that "Unlike other nuts, such as walnuts or almonds, there is little demand for pistachios sold out of the shell as nut meats. In fact, contrary to what you might expect, on a comparable weighted basis, shelled pistachios have a much lower value than pistachios in shell." (Transcript, p. 15.)

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Table 15.--Prices received by processors and prices paid by roasters for raw California pistachios, by sizes and by quarters, January 1984-September 1985

Period	Processor prices		Roaster prices	
	Extra large	Large	Extra Large	Large
	Per pound			
1984:				
January-March	$***	$***	$***	1/
April-June	***	***	***	$***
July-September	***	***	***	***
October-December	***	***	***	***
1985:				
January-March	***	***	***	***
April-June	***	***	***	***
July-September	***	***	***	***

1/ No data reported.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Prices paid by roasters for purchases of domestically grown raw pistachios were also reported for extra large and large grades of pistachios. Prices for extra-large pistachios dropped substantially over the 7 quarters for which prices were reported, or from around $*** per pound prevailing in January-March 1984 to $*** per pound during July-September 1985. Prices paid for large pistachios dropped from about $*** per pound during April-September 1984 to about $*** per pound on subsequent purchases. Low-volume purchases of small pistachios (28-30 count), priced from $*** to $*** per pound, were registered throughout 1985 (not shown in table 15).

Importer prices.--Four importers supplied price data on pistachios imported from Iran (table 16). Most of the pricing information reported pertains to the large (22-24 and 24-26 count) and medium (26-28 count) grade categories into which most imports fall. Several respondents reported limited quantities involving extra-large (18-20 and 20-22 count) and small (28-30 count) pistachios. Large Iranian pistachios commanded a weighted-average price of $*** per pound in January-March 1984. By January-March 1985, prices for these nuts had fallen to $*** per pound. Prices subsequently firmed to $*** per pound in July-September 1985. Similarly, medium-size pistachios fell in price from $*** per pound at the start of 1984 to $*** per pound by April-June 1985, before recovering slightly to $*** per pound.

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Table 16.--Prices paid by importers for pistachios from Iran, by sizes and by quarters, January 1984-September 1985

Period	Extra large	Large	Medium	Small
	Per pound			
1984:				
January-March	1/	$***	$***	$***
April-June	1/	***	***	***
July-September	1/	***	***	***
October-December	1/	***	***	1/
1985:				
January-March	1/	***	***	1/
April-June	1/	1/	***	1/
July-September	$***	***	***	1/

1/ No data reported.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Comparison of prices.--Prices for domestic pistachios received by processors or paid by roasters for domestic pistachios are compared with prices for imported Iranian pistachios paid by importers or charged by importers upon resale to roasters in table 17. Pistachios imported from Iran were sold at prices consistently below those of comparable domestic pistachios over the period January 1984-September 1985. Imported prices were lower than domestic prices by 10 to 35 percent. Because there is a slight difference in size between large domestic and large imported pistachios as defined here, 1/ margins of underselling were not calculated.

Lost sales

Two allegations of lost sales were made, one each by two of the three roasters from whom completed questionnaires were received. In both cases, the roaster allegedly lost a customer for roasted and salted pistachios of domestic origin to another U.S. roaster that provided roasted and salted nuts produced from raw imported nuts. One firm claimed to have lost a sale of *** pounds of roasted nuts to *** 2/ in ***, while the other claimed to have lost a sale of *** pounds to *** 3/ in ***. In both instances, the potential customers reported that domestic roasted pistachios have been in short supply this year, and are frequently unobtainable. The potential customer for the larger order indicated that this problem has existed since March 1985 and speculated that the shortage may be in anticipation of a low off-year domestic harvest in 1985. *** claimed that California nuts can command a premium price

1/ Large pistachios of domestic origin are graded as 21-25 count, whereas imported pistachios are graded as 22-24 or 24-26 count.

2/ * * *.

3/ * * *.

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Table 17.--Prices for raw pistachios, large size, 1/ from domestic and imported sources, by quarters, January 1984-September 1985

Period	Domestic pistachios		Imported pistachios	
	Processor sales	Roaster purchases	Importer purchases	Importer resale 2/
	Per pound			
1984:				
January-March	$***	3/	$***	$***
April-June	***	$***	***	***
July-September	***	***	***	***
October-December	***	***	***	***
1985:				
January-March	***	***	***	***
April-June	***	***	3/	3/
July-September	***	***	***	***

1/ Large pistachios: 21-25 count for domestic, 22-24 and 24-26 for imported pistachios.

2/ Based on pricing at *** percent markup on resale, as reported by one respondent

3/ No data reported.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Note: Processor sale prices and importer resale prices are f.o.b.; roaster purchase prices and importer purchase prices are c.i.f.

because of their larger size. He noted that size seems to be more of a consideration for consumers than taste, adding that most consumers are ignorant of the superior taste of imported nuts. Price quotations offered by the roasters of domestic nuts, but rejected by these potential buyers, ranged between $*** and $*** per pound, entirely on 21-25 and 18-20 size nuts. Accepted quotes for imported nuts were $*** per pound for *** pounds of 24-36 pistachios and $*** per pound for *** pounds of pistachios of unspecified size and grade.

Lost revenues

Only one of the three firms responded to the processor/roaster questionnaire with a claim of price suppression. This company alleged that it lost about $*** in revenue on three sales of roasted pistachios totalling *** pounds because of competition with imports from Iran. In addition, references were made to reduced sales to traditional customers compared with sales in previous years. However, inquiries revealed that this roaster did not deal directly with its customers, but operated through brokers. Consequently, these claims of lost revenue could not be verified.

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Exchange rates

Quarterly data reported by the International Monetary Fund indicate that during January 1983-June 1985 the nominal value of the Iranian rial depreciated relative to the U.S. dollar in every successive period except one, or by 9.1 percent (table 18). 1/ After adjustment for relative differences between inflation rates over the 9-quarter period ended March 1985 by the respective producer price index of each country, the international purchasing power of the Iranian currency remained relatively stable, appreciating by only 0.1 percent relative to the U.S. dollar. This compares with an apparent depreciation of 11.5 percent suggested by the nominal devaluation.

Table 18.--U.S.-Iranian exchange rates: 1/ Nominal-exchange-rate equivalents of the Iranian rial in U.S. dollars, real-exchange-rate equivalents, and producer price indicators in the United States and Iran, 2/ indexed by quarters, January 1983-June 1985

Period	U.S. producer price index	Iranian producer price index	Nominal-exchange-rate index	Real-exchange-rate index 3/
			US$ per Rl	
1983:				
January-March	100.0	100.0	100.0	100.0
April-June	100.3	106.4	98.7	104.7
July-September	101.3	102.4	96.5	97.6
October-December	101.8	101.9	96.4	96.4
1984:				
January-March	102.9	108.0	96.0	100.8
April-June	103.6	113.4	95.9	104.9
July-September	103.3	110.1	92.7	98.8
October-December	103.0	110.4	91.1	97.6
1985:				
January-March	102.9	116.3	88.5	100.1
April-June	103.0	4/	90.9	4/

1/ Exchange rates expressed in U.S. dollars per Iranian rial.

2/ Producer price indicators--intended to measure final product prices--are based on average quarterly indexes presented in line 63 of International Financial Statistics.

3/ The real value of a currency is the nominal value adjusted for the difference between inflation rates as measured here by the producer price index in the United States and in Iran. Producer prices in the United States increased by 2.9 percent during January 1983-March 1985 compared with a 16.3-percent increase in Iran during the same period.

4/ Not available.

Source: International Monetary Fund, International Financial Statistics, September 1985.

Note.- January-March 1983=100.

1/ International Financial Statistics, September 1985.

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APPENDIX A

THE COMMISSION'S FEDERAL REGISTER NOTICE

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[Investigation No. 731-TA-287---(Preliminary)]

In-Shell Pistachio Nuts From Iran

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-287 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Iran of pistachio nuts, not shelled, provided for in item 148.25 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by November 12, 1985.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202-523-0369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on September 26, 1985, by counsel on behalf of the California Pistachio Commission, Blackwell Land Co., California Pistachio Orchards, Keenan Farms, Inc., Kern Pistachio Hulling & Drying Co-Op, Los Ranchos de Poco Pedro, Pistachio Producers of California, and T.M. Duche Nut Co., Inc.

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Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on October 18, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Bruce Catre (202-523-0369) not later than October 17, 1985, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before October 22, 1985, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: September 30, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-23608 Filed 10-2-85; 8:45 am]

BILLING CODE 7020-02-M

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APPENDIX B

LIST OF WITNESSES WHO APPEARED AT THE CONFERENCE

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CALENDAR OF PUBLIC CONFERENCE
INVESTIGATION NO. 731-TA-287 (Preliminary)

IN-SHELL PISTACHIO NUTS FROM IRAN

Those listed below appeared as witnesses at the United States International Trade Commission conference held in connection with the subject investigation on October 18, 1985, in the Hearing Room of the USITC Building, 701 E Street, NW., Washington, DC.

In support of the imposition of antidumping duties

Fried, Frank, Harris, Schriver & Jacobson—Counsel
Washington, DC
on behalf of—

California Pistachio Commission
Blackwell Land Co.
California Pistachio Orchards
Keenan Farms, Inc.
Kern Pistachio Hulling & Drying Co-op
Los Ranchos de Poco Pedro
Pistachio Producers of California
T.M. Duche Nut Co., Inc.

Ron Khachigian, Chairman,
California Pistachio Commission;
Senior Vice President, Blackwell Land Co.

Lawrence H. Easterling, Jr., President
Pistachio Producers of California;
Managing General
Partner, King Pistachio Growers

Henry B. Chavez, Executive Vice President and Chief
Operating Officer, Superior Farming Co.;
Chairman, California Pistachio Association

John Feder, President, T.M. Duche Nut Co.

H.P. Anderson, III, President
River West Inc.,
Chairman Marketing Committee, California Pistachio Commission

Dr. Lucinda Lewis, Coopers & Lybrand Associates

Jack Nightingale, Coopers & Lybrand Associates

David E. Birenbaum)
Alan Kashdan) ——OF COUNSEL

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In opposition to the imposition of antidumping duties

Harris & Berg—Counsel
Washington, DC
on behalf of—

Pistachio Group of the Association of Food Industries
and its members including:

American Pistachio Corp.
Andre L. Causse
J.F. Braun & Sons, Inc.
Franklin Trading Co.
Ludwig Mueller Co. Inc.
Zenobia Company
Ziba Nut, Inc.

Herbert E. Harris II)
Cheryl Ellsworth) —OF COUNSEL

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APPENDIX C

THE CUSTOMS SERVICE'S FEDERAL REGISTER NOTICE

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Federal Register / Vol. 50, No. 181 / Wednesday, September 18, 1985 / Rules and Regulations

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 85-158]

Country of Origin Marking of Pistachio Nuts

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Rescission of rulings.

SUMMARY: Customs previously ruled that imported pistachio nuts which are processed by roasting, need not subsequently be marked as products of the foreign country where grown, but become a product of the country where the roasting is performed.

Customs has received a request to rescind these rulings because the roasting process does not substantially transform pistachio nuts which have otherwise attained the character in which they will be sold to consumers prior to importation. Specifically, it has been called to Customs attention that pistachio nuts which are grown in Iran are then roasted elsewhere than in Iran. These roasted pistachio nuts are then sold without any indication that the nuts are products of Iran, and under brand names which imply that they are products of California. Customs has decided that the roasting; roasting and salting; or roasting, salting, and coloring; of pistachio nuts, without more, does not result in a substantial transformation. Accordingly, the previous rulings are being rescinded and the containers of such products must be marked to indicate the country of origin of the raw products.

EFFECTIVE DATE: October 18, 1985.

FOR FURTHER INFORMATION CONTACT: Lorrie R. Rodbart, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that all articles of foreign origin, or their containers, imported into the U.S. shall be marked in a conspicuous place with the English name of their country of origin to indicate to an ultimate purchaser in the U.S., the country of origin of the article. This statute was enacted to make consumers aware of the country of origin of articles so that they can choose between buying domestic or foreign articles. Part 134, Customs Regulations (19 CFR Part 134), sets forth the country of origin marking requirements of 19 U.S.C. 1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as "the country of manufacture, production or growth of any article of foreign origin entering the United States." An article which is grown or manufactured in a particular country and processed prior to its sale to a retail purchaser is considered to be the product of the country in which it was grown or manufactured unless the processing substantially transforms the article. A substantial transformation has traditionally been defined as a change which results in a new and different article of commerce with a new name, character, or use. Although trade usage and opinion are important in making this determination, it is Customs' position that a substantial transformation will not occur, with a resultant change in country of origin, if the process is merely a minor one which leaves the identity of the article intact. To hold otherwise would thwart the purposes for which country of origin determinations must be made, and would be inconsistent with recent court decisions and the purposes for which Congress enacted the marking statute.

Customs' previous rulings on the significance of the roasting process have been questioned by domestic producers. In ruling #724350, dated June 4, 1984, and ruling #725612, dated September 25, 1984, the issue before Customs was whether the process of roasting imported raw pistachio nuts substantially transformed these goods into a new and different article of commerce. Customs held that the roasting was a substantial transformation.

Customs has been requested to rescind these rulings on the basis that the roasting of these products does not result in a substantial transformation, both because it does not result in a new and different article of commerce with a new name, character, or use, and because roasting is not a substantial manufacturing or processing operation. Customs determined that a review of the above rulings was warranted and published a notice in the Federal Register on February 11, 1985 (50 FR 5829), soliciting public comments before any change was made.

Discussion of Comments

Sixty-six comments were received in response to the notice. The issues raised by the commenters are analyzed under the following six topics.

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The Statute

Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that, "every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked . . . in such manner as to indicate to *an ultimate purchaser in the United States the English name of the country of origin of the article*" (emphasis added).

According to *United States v. Friedlaender & Co., Inc.*, 27 CCPA 297, 302, C.A.D. 104 (1940), the purpose of the statute is to "mark the goods so that at the time of purchase the ultimate purchaser may, knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will", cited in *Globemaster, Inc. v. United States*, 68 Cust. Ct. 77, 80, C.D. 4340, 340 F. Supp. 974, 978 (1972) and *United States v. Ury*, 106 F. 2d 28, 29, (2d Cir. 1939). In addition, as to imported products from competing foreign sources, it was recognized that particular foreign origin is relevant. This is based upon the general reputation for quality; the political and social conditions in the country, and the national origin of the particular consumer. See, generally, *United States v. Friedlaender & Co., Inc., supra.*

As stated in the notice of February 11, 1985 (50 FR 5629), the impetus for this solicitation of comments came from a group of domestic pistachio nut growers who are competing with foreign pistachios, primarily from Iran. The notice provided by a country of origin marking on a retail package is necessary to give a retail purchaser the information needed to make a choice between products of different countries.

The Need for Marking

The language of 19 U.S.C. 1304 makes it plain that imported merchandise must be marked, as much as the nature of the article permits, in a way which will reach the ultimate purchaser. If an imported product is substantially transformed, the person who transforms the article is the ultimate purchaser of the article. If the imported article is repacked after this substantial transformation, the container in which it is repacked and in which it is purchased by a retail purchaser does not have to bear a country of origin marking. The substantial transformation of an imported article ends its status as a product of that foreign country of origin for Customs purposes. This is permissible pursuant to 19 U.S.C. 1304 and judicial precedent such as *United States v. Gibson-Thomsen Co., Inc.*, 27 CCPA 267, C.A.D. 98 (1940) and *Midwood Industries, Inc. v. United States*, 64 Cust. Ct. 499, C.D. 4026, 315 F. Supp. 951 (1970), appeal dismissed, 57 CCPA 141 (1970).

A number of commenters have argued that Customs need not be concerned with country of origin marking on retail containers of imports for the following reasons:

1. Labeling is more appropriately dealt with by other governmental bodies such as the Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) and by the use of other legal remedies such as private redress in section 43(a) of the Lanham Act (15 U.S.C. 1125(a)) and public remedies such as antidumping and countervailing duty provisions.

2. The cost and difficulty of keeping track of different imports from different countries which are combined before a retail product is made from these imports is substantial.

We do not agree that the legislative intent behind 19 U.S.C. 1304 is similar to that behind most of the other statutes cited. FTC requirements are directed toward providing information which the consumer should be aware of such as content and care labels. The antidumping provisions are directed toward preventing unfair economic competition in the international marketplace. None of these statutes is intended to give a purchaser notice of the country where a particular article was produced.

Thus, rather than reading these statutes as directed toward the same legislative concerns, Customs views each to be addressed to a separate and distinct legislative concern. However, FDA requirements are directed toward country of origin marking pursuant to 21 U.S.C. 16, 343. These requirements are in addition to those Customs enforces pursuant to 19 U.S.C. 1304.

Moreover, we do not agree with the suggestion that Customs is free to ignore the clear requirements of a statute. The efficacy of a statute and the wisdom of its enactment are proper concerns of the legislature. Once a statute is enacted, agencies of the Executive Branch are not free to repeal it administratively by refusing to enforce it, or by enforcing it only in those circumstances in which the outcome is believed to be desirable. Although Customs retains some limited discretion to interpret the language of the statute, we cannot go beyond the language to a question of whether to enforce or not enforce it.

The cost of compliance is noted by commenters as the third reason for non-enforcement. The statutory language allows limited exemptions from the marking requirement where the expense of marking is economically prohibitive. This subject is discussed below in more detail, in the section entitled "Problems of Compliance."

Scope of Proposal

The notice solicited comments concerning the processing of pistachio nuts.

One commenter contends that any marking of retail packages should await the receipt of enough information on the processing done to each product. We agree. The wording of the notice was designed to afford importers of a wide variety of agricultural goods an opportunity to provide information to enable us to decide whether various agricultural products are substantially transformed by the processes they undergo. The concept of substantial transformation is particularly fact oriented, and the facts in the record determine the ultimate decision.

Substantial Transformation

Judicial precedent, such as *United States v. Gibson-Thomsen Co., Inc., supra; Midwood Industries, Inc. v. United States, supra;* are most recently, *Uniroyal Inc. v. United States*, 3 CIT 220, 452 F. Supp. 1026 (1982), concern the importation of articles which are then "processed" in the U.S. The question involved in each case was, even though the imported article was processed after importation, did the imported article need to be marked under the statute.

To arrive at this conclusion, the courts in each case had to determine if an article produced as a result of this processing was a new and different article of commerce with a new name, character, or use. In making this determination, it is necessary to examine the changes wrought by the U.S. processing to determine whether U.S. processing is substantial, and creates a new and different article of commerce, or alternatively, is insignificant, and leaves the identity of the imported articles intact.

This distinction between a minor change and a change in the basic character of an article, has been incorporated in Part 134, Customs Regulations. Section 134.1(d)(1) provides, "If an imported article will be used in manufacture, the manufacturer may be the 'ultimate purchaser' if he subjects the imported article to a process which results in a substantial transformation of the article. . . ." Section 134.1(d)(2) provides, "If the manufacturing process is merely a minor one which leaves the identity of the

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imported articles intact, the consumer or user of the article, who obtains the article after the processing, will be regarded as the 'ultimate purchaser.'"

In determining whether an imported article has been subjected to substantial manufacturing or processing operations in the U.S. which transforms it into a new and different article of commerce, or only to insignificant processing which leaves the identity of the article intact, Customs will consider the following factors:

(1) The physical change in the article as a result of the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(2) The time involved in the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(3) The complexity of the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(4) The level or degree of skill and/or technology required in the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(5) The value added to the article in each foreign country or U.S. insular possession, compared to value added in the U.S.

These criteria are not exhaustive, and one or more criteria may be determinative.

Substantial Transformation Applied

We received several comments on pistachio nuts; some on behalf of domestic growers, others on behalf of importers. The comments on behalf of the domestic growers stress that the moisture in pistachio nuts is reduced from a range of 40 to 60 percent to a range of 4 to 8 percent before roasting. The "roasting" process dries the pistachio nuts further to a moisture content between 2 and 4 percent. This decrease in the moisture is accomplished by drying the pistachio nuts for 25 to 50 minutes in a belt dryer or rotary drum by a person who is unskilled or semiskilled, and this reduction in the moisture costs 2.5 to 3 cents per pound. The final, dried nuts are crisper and may be a different shade of green, but according to these comments, there is no substantial change in the taste or appearance of the nut. According to some producers, pistachio nuts are eaten by consumers both before and after the roasting. However, it should be noted that expert sources consulted by Customs indicated that there is no significant market for unroasted pistachio nuts, particularly for "snack" consumption. See, Woodruff, J.G., *Tree Nuts*, Second Edition, AVI Publishing Co. (1979) at page 598.

The comments for the importers stress that inshell (unshelled) raw pistachio nuts are shelled, screened and sorted, roasted, salted, and in most cases colored red with food color. The roasting of these nuts for 20 to 30 minutes brings the internal temperature of the nut to 280 degrees Fahrenheit, and substantially changes the chemical composition of the nut. It also destroys mold, spores, and bacteria. After roasting, the nuts are cooled and packaged. Once roasted, the nuts must be protected or else they will become rancid. The value added by roasting is over 100 percent.

The submissions on behalf of the domestic growers and importers do not present a substantially different description of the processing to which pistachio nuts are subjected. Rather, they conflict on the very basic issue of the significance of the changes to the physical and commercial character of the nuts which result from this processing. The domestic producers conclude that the pistachios are merely further dried, and the importers conclude that the heat applied to these nuts changes their fundamental character. Since the conclusions are contradictory, we believe it is appropriate to look to the sufficiency of the evidence presented.

The description of the roasting process by the importers concludes with the statement that this processing substantially changes the chemical composition of the nuts. This change is claimed to necessitate the protection of these nuts from the air. Two appendices were submitted, one for "dried" nuts, the other for "dry roasted" nuts, each of which contains lists of quantities for various components of the nuts. Some of the differences are striking; others do not appear to be of much consequence. For example, the changes in the amount of fiber, phosphorus, and sodium are minimal. The changes in the amount of water, protein, carbohydrates, iron, magnesium, ascorbic acid, and amino acids are substantial.

The submissions on behalf of the domestic growers characterize the application of heat to the pistachios as a drying rather than a substantial transformation. This characterization of the processing is based upon expert opinion by Professor Martin W. Miller of the University of California at Davis which includes a very complete description of the processing of the nuts and the results of such processing. This expert opinion provides the link between the recorded data and the conclusions as to changes in the physical and commercial character of the nuts. According to this expert, the pistachio nut, after roasting, is merely crisper. The nuts' taste remains the same, and if the color of the nut is changed at all, the change is not noticeable.

After reading all the submissions on this point, it is Customs view that the physical and commercial changes which occur in the pistachio nuts as a result of roasting are not significant, and that the identity and use of the pistachio nut remains intact. Authoritative sources consulted by Customs indicated no commercial uses for green pistachio nuts, and if such uses exist, they are apparently negligible. Roasting appears to be, like picking, sorting, and bagging, simply one of several processing steps to which all pistachio nuts are subjected, no one of which alters or limits the intended or potential commercial use. In view of this, we conclude that there has been no change in the commercial designation or identity, in the fundamental character, or commercial use of the article. So characteri[illegible] we believe that the pistach[illegible] are not changed into a new [illegible]erent article by virtue of roa[illegible]other similar incidental processing. Thus, they are not substantially transformed.

Problems of Compliance

Many of the comments focus on the problems created by a conclusion that no substantial transformation of these imported goods has taken place. This conclusion requires that each container of pistachio nuts which, for example, contains pistachio nuts from a number of different countries, be marked with the name of each country from which the pistachio nuts originate. The concern expressed is that such a container would have to contain the names of a large number of countries.

The commenters suggest some options: (1) Standardize labels to include the English name of every country of origin from which the pistachio nuts originate and (2) print a number of different labels and keep track of the countries from which pistachio nuts in a particular container are packaged. The first option is criticized by these commenters because the labels might not accurately reflect the country of origin of the pistachio nuts except coincidentally. They point out that any container which does not include pistachio nuts from each country specified on the container will be incorrectly labelled. According to the commenters, the adoption of the second

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option will necessitate an elaborate system of tracking the pistachio nuts from each country to determine in which particular container they have been placed. This, according to the comments, is an extremely difficult and costly process. Because the pistachio nuts are fungible, it is difficult to determine if the countries from which the contents of a specific container originate match the marking of the containers in which the pistachio nuts are packaged.

Customs is not convinced by the argument that country of origin marking on a container of pistachio nuts precludes the pistachio nut purchaser from purchasing from other countries. The economic and marketing factors that impel purchasers to buy from particular countries far outweigh any influence on these decisions that the cost of compliance with the marking law might have. Customs believes that in every instance the buyer must compare the economic advantages resulting from purchasing from a new source country, with the cost of compliance with the country of origin marking law.

Customs has not required that an importer track the origins of each pistachio nut in a particular container. A listing on the container of the countries which provides the constituents of the blend at the time of packing is sufficient. We believe that such a rule of reason eliminates the necessity for tracking each individual pistachio nut while permitting compliance with the marking requirement with a minimum of interference.

Given the flexibility which Customs has allowed by permitting "shotgun" marking, we do not believe that any of the commenters has shown that compliance with the marking law would be excessively costly.

Action

Accordingly, this document rescinds ruling #724350, dated June 4, 1984 and ruling #728412, dated September 23, 1984. We do not view this to be a change in an "established and uniform practice" which entails the protections of section 315(d), Tariff Act of 1930 (19 U.S.C. 1315(d)). The roasting, or roasting and salting of pistachio nuts, without more, is not a substantial transformation of the raw pistachios into new and different articles of commerce. Therefore, the containers of pistachio nuts, which have been roasted, salted, or blended; or any combination of the three processes; must be marked to indicate the country of origin of the raw products in accordance with Part 134, Customs Regulations.

Certification Requirements

In many instances, an importer of these articles does not sell them directly to the ultimate purchaser i.e. the articles are repacked after their release from Customs custody and sent forward for further distribution. In view of this, Customs believes that to further ensure that an ultimate pruchaser in the U.S. is aware of the country of origin of these articles, importers must comply with the certification requirements of § 134.25, Customs Regulations (19 CFR 134.25), set forth in T.D. 83-135, published in the Federal Register on July 26, 1983 (48 FR 33860). Section 134.25 requires importers to certify to the district director having custody of the articles that: (a) If the importer does the repacking, the new container must be marked in accordance with applicable law and regulations; or (b) if the article is sold or transferred, the importer must notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab

Commissioner of Customs.

Approved September 4, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

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